

Message Text

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PAGE 01 MANILA 01685 030458Z

ACTION EA-09

INFO OCT-01 ISO-00 PM-04 CIAE-00 INR-07 NSAE-00 L-03 /024 W

-----030717Z 032704 /15

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 5600

INFO SEC DEF WASHDC

NAVY JAG WASHDC

CSAF (JACI)

CINCPAC

CINCPACFLT

CINCPACREPPHIL

13AF

UNCLAS MANILA 1685

E.O. 11652: NA

TAGS: MARR, RP, US

SUBJ: KIRWAN CASE (SUBIC OFFICIAL DUTY)

REF: (A) MANILA 1612; (B) STATE 019702

1. IN TELEPHONE CONVERSATION FEB 2, 1977, DEPARTMENT OF JUSTICE OFFICIAL NOTIFIED EMBASSY THAT THEY WERE OFFICIALLY REQUESTING CONSULTATIONS ON KIRWAN CASE. LATER SAME DAY, EMBASSY RECEIVED FOLLOWING NOTE FROM DFA:

QUOTE: THE DEPARTMENT OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND HAS THE HONOR TO REFER TO THE CERTIFICATE OF OFFICIAL DUTY ISSUED BY COL. ROBERT N. BURHANS, USMC, ON 5 JANUARY (SIC) 1977, FOR CORPORAL STEVEN J. KIRWAN, USMC, WHO WAS CHARGED BY THE PROVINCIAL COMMANDER OF BATAAN WITH THE CRIME OF HOMECIDE.

THE CASE AROSE FROM THE COMPLAINT OF THE PROVINCIAL
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PAGE 02 MANILA 01685 030458Z

COMMANDER OF BATAAN, THAT, ON 8 DECEMBER 1976, RESPON-
DENT CORPORAL STEVEN J. KIRWAN, A MARINE PATROL GUARD,
SHOT AND KILLED ONE NONITO KUDERA Y LEGASPI AT THE
BINICTICAN HOUSING AREA, UNITED STATES NAVAL BASE,
SUBIC BAY. THE VICTIM SUSTAINED A GUNSHOT WOUND WHICH
DIRECTLY CAUSED HIS DEATH.

THE AMERICAN MILITARY AUTHORITIES CLAIM THAT RESPONDENT KIRWAN WAS IN THE PERFORMANCE OF A SPECIFIC MILITARY DUTY WHEN THE INCIDENT OCCURED (SIC) AND SUBMITTED THE SWORN STATEMENT DATED 21 DECEMBER 1976 OF CORPORAL KIRWAN CONTAINING HIS VERSION OF THE INCIDENT. ACCORDING TO KIRWAN, THE VICTIM WAS AN INTRUDER. HE ADMITS HAVING KILLED HIM BUT CLAIMS SELF-DEFENSE AND PERFORMANCE OF A LEGAL DUTY. ON THE OTHER HAND, PHILIPPINE AUTHORITIES BELIEVE THAT THERE WAS NO RATIONAL NECESSITY FOR KILLING THE VICTIM TO PREVENT HIS ESCAPE. THEY FURTHER BELIEVE THAT BOTH UNDER PHILIPPINE AND AMERICAN JURISPRUDENCE, RESPONDENT'S DEFENSES ARE UNTENABLE.

IN ACCORDANCE WITH PARAGRAPH 3 OF THE AGREED OFFICIAL MINUTES (REGARDING ARTICLE XIII OF THE MILITARY BASES AGREEMENT, AS REVISED), IT IS REQUESTED THAT THE AFOREMENTIONED CERTIFICATE OF OFFICIAL DUTY BE MADE THE SUBJECT OF REVIEW AT A CONFERENCE BETWEEN THE APPROPRIATE OFFICIALS OF THE PHILIPPINES AND THE UNITED STATES.

THE DEPARTMENT OF FOREIGN AFFAIRS AVAILS ITSELF..."

2. DEPARTMENT OF JUSTICE OFFICIALS HAVE AGREED TO HOLD A SPECIAL MEETING OF THE CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE (CJIC) NEXT WEEK TO CONSULT ON KIRWAN CASE.

3. EMBASSY WILL KEEP ADDRESSEES ADVISED ON STATUS.
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PAGE 03 MANILA 01685 030458Z

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Message Attributes

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